

**BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE**

**In the Matter of** :  
 :  
**MILK IN THE NORTHEAST AND** :  
**OTHER MARKETING AREAS** :  
 : **DOCKET NO. AO-14-A69, et al.**  
 : **DA-00-03**  
 :

**PROPOSED CORRECTIONS TO THE HEARING RECORD**

This Motion is made on behalf of the following trade organizations: Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council (California), California Dairy Campaign, Western United Dairymen (California), Idaho Dairymen's Association, Utah Dairymen's Association and the following cooperatives: Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc. The purpose of this Motion is to make typographical corrections to the Hearing Transcript and to request that limited portions of testimony offered by Geoffrey Vanden Heuvel on behalf of the above referenced trade organizations and cooperatives at the rulemaking hearing held on May 8, 2000, in Alexandria, Virginia be stricken from the record and from consideration by the Department.

The proposed corrections to the record are as follows:

1. Hearing Transcript page 111, line 10: "Global" should be replaced with "Rural".
2. Hearing Transcript page 127, line 19: "print" should be replaced with "plant".
3. Hearing Transcript page 128, line 24: "shooting cage" should be replaced with "shrinkage".

4. Hearing Transcript page 129, line 2: "shooting cage" should be replaced with "shrinkage".
5. Hearing Transcript page 211, line 3: "Vance Light" should be replaced with "Van Slyke".
6. Hearing Transcript page 211, line 17: "Vance Light" should be replaced with "Van Slyke".
7. Hearing Transcript page 242, line 2: "mls" should be replaced with "cents less".
8. Hearing Transcript page 481, line 1: "parody" should be replaced with "parity".
9. Hearing Transcript page 614, line 4: "component" should be replaced with "proponent".
10. Hearing Transcript page 861, line 5: "dairy" should be replaced with "Dairy".
11. Hearing Transcript page 861, line 6: "producers in" should be replaced with "Producers of".
12. Hearing Transcript page 866, line 24: "approximately" should be replaced with "appropriately".
13. Hearing Transcript page 869, line 4: "grade" should be replaced with "great".
14. Hearing Transcript page 873, line 17: "advocation" should be replaced with "abdication".
15. Hearing Transcript page 890, line 24: "chief" should be replaced with "cheese".
16. Hearing Transcript page 929, line 7: The transcript references missing testimony and should at least indicate that the article being discussed is a reference to Mark Stephenson's article.
17. Hearing Transcript page 1282, line 7: "sped" should be replaced with "spec".
18. Hearing Transcript page 1368, line 4: "YALE" should be replaced with "VETNE".
19. Hearing Transcript page 1643, line 5: "hire" should be replaced with "higher".
20. Hearing Transcript page 1652, line 14: "then slight" should be replaced with "Van Slyke".
21. Hearing Transcript page 1663, line 15: "casing" should be replaced with "casein".

Movants request that the following limited portions of Geoffrey Vanden Heuvel's testimony be removed from the record. Mr. Vanden Heuvel's testimony beginning at Hearing Transcript page

672, line 9 that has lines through it should be stricken as follows:

page 672

6 The introduction of make allowances is new. As  
7 California has shown, the cost of converting end product  
8 prices to raw milk prices is an ongoing and tedious exercise  
9 in adjustments after adjustments; ~~more regulations still.~~  
10 Our proposal cannot end this because some regulation comes  
11 with end product pricing, but we should strive to keep it to  
12 a minimum until a market replacement is found.

Movants request that portions from page 875, line 23 to page 877, line 7 be stricken, as indicated by the lines drawn through the testimony below:

page 875

19 manufacturing plant capacity in the nation. As a result of  
20 regulatory pricing programs, generous conversion margins  
21 that will encourage undue expansion of processing should be  
22 avoided.

23 The reform should not model California. The

~~24 California system represents the ultimate in regulatory  
25 pricing, as opposed to free markets. It establishes the~~

page 876

~~1 highest degree of government interference in agricultural  
2 markets by setting the prices that all plants must pay to  
3 producers. These prices are the result of a policy driven  
4 by a mercantilist state policy on dairy and supported by  
5 policies in direct contradiction to the AMAA.~~

~~6 By mercantilist, we mean that the state uses its~~

~~7 powers to provide its merchants a significant competitive~~

~~8 advantage in the marketplace, both domestic and foreign.~~

9 The California system is an all play/all pay program. That  
10 contrasts with the Federal Milk Order program, which is  
11 voluntary for producers, and only Class I processors with  
12 distribution in regulated areas are subject to regulation.  
13 All others can or cannot participate as they wish.  
14 The California pricing system is a direct result  
15 of the all play/all pay system. In order that processors  
16 are not burdened with so high a cost for product that they  
17 ~~must~~ refuse to take milk, ~~regulatory~~ prices are ~~very low and~~  
18 ~~are designed to give plants a cushion in the manufacture of~~  
19 ~~milk products to avoid that result.~~  
20 California has shown the ability ~~and willingness~~  
21 to quickly modify its programs ~~to meet its own policy goals.~~  
22 Attached is Table 4, which we referred to earlier. It lists  
23 a series of hearings held by California resulting in a  
24 modification of pricing formula or prices paid to producers.  
25 The FMMO cannot respond so quickly and so often, nor should

page 877

1 it.

~~2 Keeping California's processing plants competitive~~

~~3 is a very high priority of the California program. The~~

4 California program has its roots in different legislation

~~5 with a different policy goal than that of the AMAA. Giving~~

~~6 processing plants a competitive advantage is not a high~~

~~7 priority under the AMAA. It would be inappropriate, if not~~

8 futile, for the Secretary to embark upon a course of pricing

9 that sought to match California or respond directly to its

10 pricing.

Movants also seek to strike portions of testimony beginning at page 883 line 23 of the

Hearing Transcript as indicated by the testimony below with lines through it:

page 883

16 CDFA has found that over 95 percent of the product  
17 volume in that price survey is sold on a long-term contract  
18 basis for a price that is directly indexed to the very same  
19 plant survey price that sets the milk price. The result is  
20 a circular pricing system that is mathematically incapable  
21 of fully reflecting the top of the market price for powder  
22 because so little of the survey volume is priced off of the  
23 spot market. This system has deprived ~~California~~ producers  
24 ~~of the full benefit of rising powder markets.~~

25 When spot prices are lower than the survey price,

page 884

1 the survey price falls rapidly. The result is that  
2 producers are deprived of the highs, but absorb the effects  
3 of the lows. I confirm this effect by asking a producer who  
4 was an active participant in these sales.  
5 Figure 4 is a graph that compares the California  
6 nonfat dry milk prices to the top of the mostly range in the  
7 central states nonfat dry milk report in the Dairy Market  
8 News. The central states price most closely resembles a  
9 spot market cash price. This graph demonstrates that when  
10 the spot price moves up, ~~California~~ prices are very slow to  
11 respond, and when they do they do not reach the top of the  
12 market. However, when spot prices fall, ~~California~~ prices  
13 fall almost immediately, thereby depriving ~~California~~  
14 producers, whose milk is priced off of the ~~California~~ price  
15 survey, from the benefits of the rising market.

Only portions of testimony with the lines drawn through them are to be removed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that an accurate photostatic copy of the foregoing was served upon the following this \_\_\_\_ day of June, 2000, by ordinary United States Mail service, postage prepaid.

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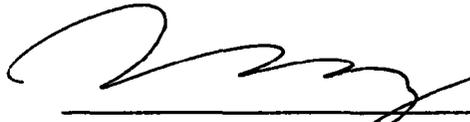
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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

USDA  
OALJ/HCO  
2000 JUL -5 P 4: 36

In re: ) Docket Nos. AO 14-A69, *et al.*; DA-00-08  
Milk in the Northeast and )  
Other Marketing Areas )  
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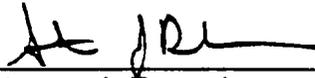
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**OBJECTIONS OF THE INTERNATIONAL DAIRY FOODS ASSOCIATION TO THE  
PROPOSED CORRECTIONS OF THE WESTERN STATES DAIRY PRODUCERS  
TRADE ASSOCIATION ET AL.**

On or about June 30, 2000, the Western States Dairy Producers Trade Association *et al.* served their "Proposed Corrections to the Hearing Record." The International Dairy Foods Association ("IDFA ") hereby objects to all of the proposed "corrections" set forth on pages three through five of that pleading. These purported corrections do not correct typographical or similar errors in transcription. Rather, they represent the wholesale deletion of significant portions of testimony that was given at the hearing, under oath. Moreover, the deletions are with respect to testimony that was made available to the hearing participants in written form and simply read into the record by the witness. Thus, the testimony was in no way accidental.

For reasons that are not stated, that witness now apparently regrets the testimony that he gave. But it would make a mockery of the formal hearing process for a witness to wait until after the hearing had ended to decide to make substantial, substantive changes to his or her testimony. IDFA is not aware of any precedent or basis for such action. The proposed changes set forth on pages three through five accordingly should not be accepted by USDA.

Respectfully submitted,



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Association

CERTIFICATE OF SERVICE

I certify that I have served the foregoing by U.S. Mail by postage prepaid this 5<sup>th</sup> day of July, 2000 on the following individuals:

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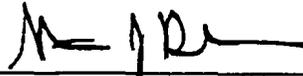
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A handwritten signature in black ink, appearing to read "S. J. Rosenbaum", written above a horizontal line.

Steven J. Rosenbaum

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

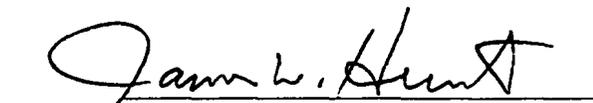
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In re: )  
          ) Docket Nos. AO-14-A69; *et al.*; DA-00-03  
Milk in the Northeast and )  
Other Marketing Areas )

**Order Denying Motion to Strike Testimony**

The motion of Western States Dairy Producers Trade Association; Dairy Producers of New Mexico; Texas Association of Dairymen; Milk Producers Council (California); California Dairy Campaign; Western United Dairymen (California); Idaho Dairymen's Association; Utah Dairymen's Association; Continental Dairy Products, Inc.; Elite Milk Producers, Inc.; and Select Milk Producers, Inc., to strike portions of the testimony given at the hearing by Geoffrey Vanden Heuvel is denied. Section 900.10 of the Rules of Practice (7 C.F.R. § 900.10) provides that a "true transcript" of the testimony given at the hearing be certified to the Hearing Clerk. The Rules provide that testimony may be corrected but do not provide that it may be stricken.

July 12, 2000

  
JAMES W. HUNT  
Administrative Law Judge